

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR BIOLOGICAL DIVERSITY;
DEFENDERS OF WILDLIFE; ANIMAL LEGAL
DEFENSE FUND,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States of America; PATRICK
M. SHANAHAN, in his official capacity as Acting
Secretary of Defense; LIEUTENANT GENERAL
TODD T. SEMONITE, in his official capacity as
Commander and Chief of Engineers, U.S. Army
Corps of Engineers; KEVIN McALEENAN, in his
official capacity as Acting Homeland Security
Secretary; DAVID BERNHARDT, in his official
capacity as Secretary of the Interior,

Defendants.

Civil Action No. 1:19-cv-00408 (TNM)

NOTICE OF FILING OF STATEMENT

Defendants hereby submit a statement filed in two cases pending in the U.S. District Court for the Northern District of California advancing claims similar to those advanced in this litigation. Those cases are *State of California, et al. v. Trump, et al.*, 19-cv-872-HSG (N.D. Cal.) and *Sierra Club, et al. v. Trump, et al.*, 19-cv-892-HSG (N.D. Cal.).

On May 13, 2019, the Honorable Haywood S. Gilliam, Jr. issued an order directing the government to submit a statement “providing the Court with updated information concerning the status of funds proposed to be used for border barrier construction under the various disputed statutes.” *See* Exhibit A. The government filed a statement in response on May 15, 2019. *See* Exhibit B. Because certain of the sources of funding and statutory authorities addressed in the

government's statement are at issue in this litigation, the government hereby notifies the Court and opposing counsel of this filing.

Dated: May 16, 2019

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

JAMES M. BURNHAM
Deputy Assistant Attorney General

JOHN R. GRIFFITHS
Director, Federal Programs Branch

ANTHONY J. COPPOLINO
Deputy Director, Federal Programs Branch

/s/ Andrew I. Warden
ANDREW I. WARDEN (IN Bar No. 23840-49)
Senior Trial Counsel, Federal Programs Branch

/s/ Leslie Cooper Vigen
LESLIE COOPER VIGEN (D.C. Bar No.
1019782)
KATHRYN C. DAVIS
MICHAEL J. GIRARDI
RACHAEL L. WESTMORELAND
Trial Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, DC 20005
Tel: (202) 305-0727
Fax: (202) 616-8470
Email: Leslie.Vigen@usdoj.gov

Counsel for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al.,
Plaintiffs,

v.

DONALD J. TRUMP, et al.,
Defendants.

Case No. [19-cv-00872-HSG](#)

**ORDER DIRECTING DEFENDANTS
TO SUBMIT STATEMENT**

SIERRA CLUB, et al.,
Plaintiffs,

v.

DONALD J. TRUMP, et al.,
Defendants.

Case No. [19-cv-00892-HSG](#)


The Court hereby DIRECTS Defendants to submit a statement of no more than ten (10) pages by 5:00 p.m. PDT on May 15, 2019, providing the Court with updated information concerning the status of funds proposed to be used for border barrier construction under the various disputed statutes. Defendants' statement must cover the following topics:

- (1) To the extent any information about the status and/or use of funds contained in Defendants' oppositions to the pending motions for preliminary injunction has changed, updated information;
- (2) The total amount of funds that DOD has made, and intends to make available in the next six months, to DHS in response to any DHS request this fiscal year for DOD assistance under Section 284;

- (3) Of the total amount of funds identified in (2), how much is attributable to funds transferred (or to be transferred) into the counter-narcotics support line of the Drug Interdiction and Counter-Drug Activities, Defense, account under Section 8005;
- (4) The amount of unobligated funds that were in the counter-narcotics support line of the Drug Interdiction and Counter-Drug Activities, Defense, account before any Section 8005 reprogramming;
- (5) The outcome of the requested "detailed assessment of whether and how specific military construction projects could support the use of the armed forces in addressing the national emergency at the southern border," which Defendants have represented was due by May 10, 2019, *see* Case No. 19-cv-00872, Dkt. No. 89-10 ("Rapuano Decl.") ¶ 14; and
- (6) The outcome of the request for various personnel "to identify, by May 10, 2019, existing military construction projects of sufficient value to provide up to \$3.6 billion of funding for [the Acting Secretary of Defense's] consideration," *id.* ¶ 15.

IT IS SO ORDERED.

Dated: 05/13/2019


HAYWOOD S. GILLIAM, JR.
United States District Judge

JAMES M. BURNHAM
Deputy Assistant Attorney General
JOHN R. GRIFFITHS
Director, Federal Programs Branch
ANTHONY J. COPPOLINO
Deputy Director, Federal Programs Branch
ANDREW I. WARDEN (IN #23840-49)
Senior Trial Counsel
KATHRYN C. DAVIS
MICHAEL J. GERARDI
LESLIE COOPER VIGEN
RACHAEL WESTMORELAND
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, D.C. 20530
Tel.: (202) 616-5084
Fax: (202) 616-8470
Attorneys for Defendants

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

No. 4:19-cv-00872-HSG

**DEFENDANTS' RESPONSE TO
THE COURT'S MAY 13, 2019
ORDER**

Hearing Date: May 17, 2019
Time: 10:00 a.m.
Place: Oakland Courthouse
Courtroom 2, 4th Floor

Defendants hereby submit the following response to the questions posed in the Court's May 13, 2019 Order regarding status of funds used for border barrier construction under the disputed statutes in this case.

1. Updated Information About the Status and/or Use of Funds

A. Treasury Forfeiture Fund (TFF)

As explained in Defendants' opposition brief in the States' case, TFF funds are being made available to U.S. Customs and Border Protection (CBP) in two tranches. *See* Defs' Opp. at 9 (No. 4:19-cv-00872, ECF No. 89). The first tranche of \$242 million was made available to CBP for obligation on March 14, 2019. *Id.* CBP will be obligating the first \$242 million through an Interagency Agreement with the U.S. Army Corps of Engineers. *See* Third Declaration of Loren Flossman ¶ 4 (May 14, 2019) (attached as Exhibit 1). CBP will retain a small portion of the \$242 million for program support on the TFF funded projects. *Id.* The Interagency Agreement will likely be in place by June 2019. The second tranche of \$359 million is expected to be made available for obligation at a later date upon Treasury's receipt of additional anticipated forfeitures. *See* Defs' Opp. at 9.

CBP plans to use TFF funds exclusively for projects in the Rio Grande Valley Sector. *See* Third Flossman Decl. ¶ 5. CBP may use some TFF funds for planning related to barrier construction projects in other sectors, but no decisions have been made to use TFF funds for that purpose. *Id.*

B. 10 U.S.C. § 284 & § 8005 of the DoD Appropriations Act

On May 13, 2019, Defendants submitted the Second Declaration of Kenneth Rapuano that provides updated information about the Department of Defense's (DoD) use of 10 U.S.C. § 284 & § 8005 of the DoD Appropriations Act for Fiscal Year 2019. Mr. Rapuano's declaration updates the status of the project identified as Yuma Sector Project 2 and states that the U.S. Army Corps of Engineers has decided not to fund or construct this project under § 284 or § 8005. *See* Second Rapuano Decl. ¶ 4. Additionally, Mr. Rapuano's second declaration explains that, on May 9, 2019, the Acting Secretary of Defense authorized the funding of four additional CBP-requested projects using § 284. *Id.* ¶ 6. One project is located in California (El Centro Project 1), and three projects are located in Arizona (Tucson Sector Projects 1, 2, and 3). *Id.*; *see also* First Rapuano Decl., Ex. A (describing project locations). To fund these four projects, the Acting Secretary of Defense decided to use DoD's general

transfer authority under § 8005 of the DoD Appropriations Act, 2019 (Pub. L. 115-235), and § 1001 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (NDAA) (Pub. L. 115-232), as well as DoD's special transfer authority under § 9002 of the DoD Appropriations Act and § 1512 of the NDAA, to transfer \$1.5 billion between DoD appropriations. *See* Second Rapuano Decl. ¶ 7. Specifically, the Acting Secretary of Defense determined that the four projects will be funded through a transfer of \$1.5 billion to the counter-narcotics support line of the Drug Interdiction and Counter-Drug Activities, Defense, account. *See id.* On May 9, 2019, the DoD Comptroller initiated the reprogramming to transfer these funds. *See* Third Declaration of Kenneth Rapuano ¶ 4 (May 15, 2019) (attached as Exhibit 2).¹ On May 15, 2019, the Acting Secretary of Homeland Security exercised his authority under § 102(c)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended, to issue waivers for the four projects. *See* Determinations Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended, 84 Fed. Reg. 21798-21801 (May 15, 2019). The U.S. Army Corps of Engineers expects to award contracts for the four projects by May 16, 2019, and construction will begin no earlier than 45 days after the award of the contracts. *See* Second Rapuano Decl. ¶¶ 10-11.

Mr. Rapuano's declaration also stated that a contract is expected to be awarded by May 16, 2019, for the project identified as Yuma Sector Project 1. *See* Second Rapuano Decl. ¶ 10. A contract had previously been awarded for this project on April 9, 2019, *see* First Rapuano Decl. ¶ 8, but in response to a bid protest filed with the Government Accountability Office (GAO), *see* www.gao.gov/docket/B-417499.1, the U.S. Army Corps of Engineers took corrective action to remedy the alleged procurement mistake and terminated the contract on May 4, 2019. The U.S. Army Corps of Engineers resolicited bids for the contract on May 5, 2019, and a new contract is expected to be awarded by May 16, 2019. *See* Second Rapuano Decl. ¶ 10.

Additionally, the contract that the U.S. Army Corps of Engineers awarded to SLSCO Ltd. of Galveston, Texas (\$789 million) on April 9, 2019, *see* First Rapuano Decl. ¶ 8, to perform work in support of El Paso Sector Project 1 is currently the subject of bid protest litigation in the United States

¹ Mr. Rapuano's second declaration stated that the reprogramming actions were initiated on May 10, but the reprogramming actions actually occurred on May 9. *See* Third Rapuano Decl. ¶ 4.

1 Court of Federal Claims. *See Fisher Sand & Gravel v. United States*, No. 19-615C (Fed. Cl.). The court
 2 is scheduled to hold a sealed hearing on May 16, 2019, to address the merits of the plaintiff's challenge
 3 to the agency's decision to override an automatic stay of contract performance. *See id.* (ECF Nos. 24,
 4 34).

5 C. 10 U.S.C. § 2808

6 On May 6, 2019, the Chairman of the Joints Chiefs of Staff submitted an assessment to the
 7 Acting Secretary of Defense addressing whether and how military construction projects could
 8 support the use of the armed forces in addressing the national emergency at the southern border.
 9 *See* Third Rapuano Decl. ¶ 5. This internal assessment provides the Acting Secretary of Defense
 10 with information and recommendations about specific border barrier construction projects
 11 identified by the Department of Homeland Security. *Id.* The Chairman's assessment analyzes
 12 various factors and is intended to inform the Acting Secretary's determination whether specific
 13 barrier construction projects are necessary to support the use of the armed forces and which specific
 14 projects to undertake. *Id.* The Acting Secretary of Defense has taken no action on the assessment
 15 and has not yet decided to undertake or authorize any barrier construction projects under § 2808.
 16 *Id.*

17 Also on May 6, 2019, the Under Secretary of Defense (Comptroller)/Chief Financial Officer
 18 identified existing unawarded military construction projects of sufficient value to provide up to \$3.6
 19 billion of funding for potential border barrier construction pursuant to § 2808. *Id.* ¶ 6. The
 20 Comptroller reviewed the pool of current unawarded military construction projects with award dates
 21 after September 30, 2019. *Id.* As directed by the Acting Secretary of Defense, the Comptroller
 22 excluded from consideration military housing, barracks, or dormitory projects, as well as military
 23 construction projects that already have been awarded. *Id.* The Acting Secretary of Defense has
 24 taken no action on this information and has not yet decided to undertake or authorize any barrier
 25 construction projects § 2808. *Id.*

26 The Acting Secretary of Defense is not expected to make a decision regarding any projects
 27 under § 2808 prior to May 22, 2019. *Id.* ¶ 7. Once a decision is made, the Government will inform
 28 the Court.

1
2 **2. DoD Funding For Support to DHS Under 10 U.S.C. § 284(b)(7)**

3 To date, the Acting Secretary of Defense has authorized \$2.5 billion in border barrier
4 construction support under 10 U.S.C. § 284(b)(7). *Id.* ¶ 3. The Acting Secretary of Defense does
5 not intend, and is not currently planning, to provide additional border barrier construction support
6 to DHS under § 284(b)(7) during the next six months. *Id.*

7 Of this \$2.5 billion total, \$1,818,465,000 is attributable to transfers of funds to the counter-
8 narcotics support line of the Drug Interdiction and Counter-Drug Activities, Defense, account
9 pursuant to § 8005 of the DoD Appropriations Act and § 1001 of the NDAA. \$1 billion was
10 transferred on March 25, 2018, *see* First Rapuano Decl. ¶ 5, Ex. C & D, and \$818,464,000 was
11 transferred on May 9, 2019, *see* Second Rapuano Decl. ¶ 7, Ex. B; Third Rapuano Decl. ¶ 4, Ex. A.²
12 The remaining \$681,535,000 was transferred to the counter narcotics support line on May 9, 2019
13 pursuant to DoD's special transfer authority under § 9002 of the DoD Appropriations Act and
14 § 1512 of the NDAA. *See* Third Rapuano Decl. ¶ 4, Ex. A. Section 9002 of the DoD
15 Appropriations Act incorporates the requirements of § 8005 by reference and § 1512 of NDAA
16 incorporates the requirements of § 1001 by reference.

17 At the time of the initial transfer of funds on March 25, 2019, the counter-narcotics support
18 line appropriation had a total of \$238,306,000 in unobligated funds. *See* First Rapuano Decl. ¶ 5, Ex.
19 D at 2.

20
21 DATE: May 15, 2019

Respectfully submitted,

22 JAMES M. BURNHAM
23 Deputy Assistant Attorney General

24 JOHN G. GRIFFITHS
25 Director, Federal Programs Branch

26 ANTHONY J. COPPOLINO
27 Deputy Director, Federal Programs Branch

28 ² Exhibit A is an updated and signed version of the transfer notice that was provided to Congress on May 10, 2019. *See* Third Rapuano Decl. It replaces Exhibit C to the Second Rapuano Declaration. *Id.*

/s/ Andrew I. Warden

ANDREW I. WARDEN

Senior Trial Counsel (IN Bar No. 23840-49)

RACHAEL L. WESTMORELAND

KATHRYN C. DAVIS

MICHAEL J. GERARDI

LESLIE COOPER VIGEN

Trial Attorneys

U.S. Department of Justice

Civil Division, Federal Programs Branch

1100 L Street, NW

Washington, D.C. 20530

Tel.: (202) 616-5084

Fax: (202) 616-8470

EXHIBIT 1

THIRD DECLARATION OF LOREN FLOSSMAN

I, Loren Flossman, declare as follows:

1. I am the Acquisition Program Manager for the Wall Program Management Office (Wall PMO), U.S. Border Patrol Program Management Directorate, U.S. Customs and Border Protection (CBP), an agency of the Department of Homeland Security (DHS). Wall PMO is responsible for border barrier projects.
2. The statements in this declaration are based on my personal knowledge and information that I have received in my official capacity.
3. I previously submitted a declaration on April 1, 2019, that explained CBP's use of Treasury Forfeiture Fund (TFF) funds for barrier construction along the southern border. This declaration provides updated information about CBP's use of TFF funds.
4. TFF are being made available to CBP in two tranches. The first tranche of \$242 million was made available to CBP for obligation on March 14, 2019. CBP will be obligating the first \$242 million on an Interagency Agreement (IAA) with the U.S. Army Corps of Engineers (USACE). CBP will retain a small portion of the \$242 million for program support on the TFF funded projects. The IAA will likely be in place by June 2019.
5. As mentioned in my previous declaration, CBP plans to use TFF funds exclusively for projects in the Rio Grande Valley Sector. CBP may use some TFF funds for planning related to barrier construction projects in other sectors, but no decisions have been made to use TFF funds for that purpose.

This declaration is made pursuant to 28 U.S.C. § 1746. I declare under penalty of perjury that the foregoing is true and correct to the best of my current knowledge.

Executed on this 14th day of May, 2019.

**Loren
Flossman**

Digitally signed by Loren Flossman
DN: cn=Loren Flossman, o=Border Wall PMO,
ou=Portfolio Manager,
email=Loren.w.flossman@cbp.dhs.gov, c=US
Date: 2019.05.14 18:01:52 -04'00'

Loren Flossman
Acquisition Program Manager
U.S. Customs and Border Protection

EXHIBIT 2

THIRD DECLARATION OF KENNETH P. RAPUANO

I, KENNETH P. RAPUANO, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Assistant Secretary of Defense for Homeland Defense and Global Security (ASD(HD&GS)). Among other duties, which are generally reflected in Department of Defense (DoD) Directive 5111.13, I am responsible for developing, coordinating, and overseeing implementation of DoD policy for plans and activities related to defense support of civil authorities. On April 5, 2018, the Secretary of Defense designated the ASD(HD&GS) to manage the then-newly established DoD Border Security Support Cell. The DoD Border Security Support Cell is the focal point and integrator for all requests for assistance, taskings, and information related to DoD support pursuant to the President's April 4, 2018, memo, "Securing the Southern Border of the United States."

2. This declaration is based on my own personal knowledge and information made available to me in the course of my official duties.

10 U.S.C. § 284(b)(7)

3. To date, the Acting Secretary of Defense has authorized \$2.5 billion in border barrier construction support to DHS under 10 U.S.C. § 284(b)(7). The Acting Secretary of Defense does not intend, and is not currently planning, to provide additional border barrier construction support to DHS under § 284(b)(7) during the next six months.

4. In paragraph 8 of my second declaration, I stated that the Under Secretary of Defense (Comptroller)/Chief Financial Officer initiated the reprogramming to transfer funds on May 10, 2019. The reprogramming actions that initiated the transfer actually occurred on May 9, 2019. See Exhibit A, attached hereto which is an updated and signed version of the transfer notice that was provided to Congress on May 10, 2019. This exhibit replaces Exhibit C to my second declaration dated May 13, 2019.

5. On May 6, 2019, the Chairman of the Joints Chiefs of Staff submitted an assessment to the Acting Secretary of Defense addressing whether and how military construction projects could support the use of the armed forces in addressing the national emergency at the southern border. This internal assessment provides the Acting Secretary of Defense with information and recommendations about specific border barrier construction projects identified by the Department of Homeland Security. The Chairman's assessment analyzes various factors and is intended to inform the Acting Secretary's determination whether specific barrier construction projects are necessary to support the use of the armed forces and which specific projects to undertake. The Acting Secretary of Defense has taken no action on the assessment and has not yet decided to undertake or authorize any barrier construction projects under section 2808.

6. On May 6, 2019, the Under Secretary of Defense (Comptroller)/Chief Financial Officer identified existing unawarded military construction projects of sufficient value to provide up to \$3.6 billion of funding for potential border barrier construction pursuant to section 2808. The

Comptroller reviewed the pool of current unawarded military construction projects with award dates after September 30, 2019. As directed by the Acting Secretary of Defense, the Comptroller excluded from consideration military housing, barracks, or dormitory projects, as well as military construction projects that already have been awarded. The Acting Secretary of Defense has taken no action on this information and has not yet decided to undertake or authorize any barrier construction projects under section 2808

7. The Acting Secretary of Defense is not expected to make a decision regarding any projects under section 2808 prior to May 22, 2019.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 15, 2019


KENNETH P. RAPUANO

EXHIBIT A

Unclassified

REPROGRAMMING ACTION

Page 1 of 8

Subject: Support for DHS Counter-Drug Activity Reprogramming Action						DoD Serial Number: FY 19-02 RA	
Appropriation Title: Various Appropriations						Includes Transfer? Yes	
Component Serial Number:	(Amounts in Thousands of Dollars)						
	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program
Line Item	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity Amount
a	b	c	d	e	f	g	h i

This reprogramming action is submitted because these actions use general and special transfer authority. This reprogramming action provides funding in support of higher priority items, based on unforeseen military requirements, than those for which originally appropriated; and is determined to be necessary in the national interest. It meets all administrative and legal requirements, and none of the items has previously been denied by the Congress.

Part I of this reprogramming action transfers \$818.465 million between Fiscal Year (FY) 2019 Defense appropriations. This reprogramming action uses \$818.465 million of general transfer authority pursuant to section 8005 of division A of Public Law 115-245, the Department of Defense (DoD) Appropriations Act, 2019; and section 1001 of Public Law 115-232, the John S. McCain National Defense Authorization Act for FY 2019.

Part II of this reprogramming action transfers \$681.535 million between FY 2019 Title IX, Overseas Contingency Operations (OCO) Defense appropriations. This reprogramming action uses \$681.535 million of special transfer authority pursuant to section 9002 of Title IX, OCO, of division A of Public Law 115-245, the Department of Defense (DoD) Appropriations Act, 2019 and section 1512 of Public Law 115-232, the John S. McCain National Defense Authorization Act for FY 2019.

PART I

FY 2019 REPROGRAMMING INCREASE: **+818,465**

Drug Interdiction and Counter-Drug Activities, Defense, 19/19 **+818,465**

Budget Activity 01: Counter-Narcotics Support

238,306	238,306	+818,465	1,056,771
---------	---------	----------	-----------

Explanation: Funds are required to provide support for counter-drug activities of the Department of Homeland Security (DHS). DHS has identified areas along the southern border of the United States that are being used by individuals, groups, and transnational criminal organizations as drug smuggling corridors, and determined that the construction of additional physical barriers and roads in the vicinity of the United States border is necessary in order to impede and deny drug smuggling activities. DHS requests DoD assistance in the execution of projects to replace existing vehicle barriers or dilapidated pedestrian fencing with new pedestrian fencing, construct roads, and install lighting. Title 10, U.S. Code, Section 284(b)(7) authorizes the DoD to support counterdrug activities of other Federal agencies through the construction of roads and fences, and the installation of lighting, to block drug smuggling corridors across international boundaries of the United States. Such support is funded using DoD's Drug Interdiction and Counter-Drug Activities appropriation.

Approved (Signature and Date)

Elaine McCusker

5/9/19

Unclassified

REPROGRAMMING ACTION

Page 2 of 8

Subject: Support for DHS Counter-Drug Activity Reprogramming Action						DoD Serial Number: FY 19-02 RA	
Appropriation Title: Various Appropriations						Includes Transfer? Yes	
Component Serial Number:	(Amounts in Thousands of Dollars)						
	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program
Line Item	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity Amount
a	b	c	d	e	f	g	h i
FY 2019 REPROGRAMMING DECREASES:					-818,465		
<u>ARMY DECREASES</u>					<u>-35,959</u>		
<u>Reserve Personnel, Army, 19/19</u>					<u>-10,599</u>		
<u>Budget Activity 01: Reserve Component Training and Support</u>							
		4,873,661		4,873,661		-10,599	4,863,062
<u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-5.018 million) and Continuation Pay (CP) (\$-5.581 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.							
<u>National Guard Personnel, Army, 19/19</u>					<u>-25,360</u>		
<u>Budget Activity 01: Reserve Component Training and Support</u>							
		8,980,394		8,980,394		-25,360	8,955,034
<u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-14.503 million) and Continuation Pay (CP) (\$-10.857 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.							
<u>NAVY DECREASES</u>					<u>-129,251</u>		
<u>Military Personnel, Navy, 19/19</u>					<u>-88,503</u>		
<u>Budget Activity 01: Pay and Allowances of Officers</u>							
		8,840,745		8,840,745		-33,002	8,407,743
<u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-25.496 million) and Continuation Pay (CP) (\$-7.506 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.							
<u>Budget Activity 02: Pay and Allowances of Enlisted</u>							
		19,702,868		19,702,868		-55,501	19,647,367
<u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-37.733.million) and Continuation Pay (CP) (\$-17.768 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.							

Unclassified

REPROGRAMMING ACTION

Page 3 of 8

Subject: Support for DHS Counter-Drug Activity Reprogramming Action						DoD Serial Number: FY 19-02 RA	
Appropriation Title: Various Appropriations						Includes Transfer? Yes	
Component Serial Number:	(Amounts in Thousands of Dollars)						
	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program
Line Item	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity Amount
a	b	c	d	e	f	g	h i
Military Personnel, Marine Corps, 19/19						-36,653	
Budget Activity 01: Pay and Allowances of Officers							
		3,065,655		3,065,655		-12,030	3,053,625
<p><u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-12.030 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.</p>							
Budget Activity 02: Pay and Allowances of Enlisted							
		9,517,117		9,517,117		-24,623	9,492,494
<p><u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-23.287 million) and Continuation Pay (CP) (\$-1.336 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.</p>							
Reserve Personnel, Navy, 19/19						-4,095	
Budget Activity 01: Reserve Component Training and Support							
		2,064,037		2,064,037		-4,095	2,059,942
<p><u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-2.923 million) and Continuation Pay (CP) (\$-1.172 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.</p>							
AIR FORCE DECREASES						-402,255	
Military Personnel, Air Force, 19/19						-45,249	
Budget Activity 01: Pay and Allowances of Officers							
		9,773,411		9,771,327		-45,249	9,726,078
<p><u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-30.785 million) and Continuation Pay (CP) (\$-14.464 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.</p>							

Unclassified

REPROGRAMMING ACTION

Page 4 of 8

Subject: Support for DHS Counter-Drug Activity Reprogramming Action						DoD Serial Number: FY 19-02 RA	
Appropriation Title: Various Appropriations						Includes Transfer? Yes	
Component Serial Number:	(Amounts in Thousands of Dollars)						
	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program
Line Item	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity Amount
a	b	c	d	e	f	g	h i
<u>Reserve Personnel, Air Force, 19/19</u>						<u>-4,835</u>	
Budget Activity 01: Reserve Component Training and Support							
		1,885,498		1,885,498		-4,835	1,880,663
<p><u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-4.274 million) and Continuation Pay (CP) (\$-0.561 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.</p>							
<u>National Guard Personnel, Air Force, 19/19</u>						<u>-8,571</u>	
Budget Activity 01: Reserve Component Training and Support							
		3,761,744		3,761,744		-8,571	3,753,173
<p><u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-5.220 million) and Continuation Pay (CP) (\$-3.351 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.</p>							
<u>Aircraft Procurement, Air Force 19/21</u>						<u>-57,000</u>	
Budget Activity 05: Modification of In-service Aircraft							
E-3		116,865		116,865		-57,000	59,865
<p><u>Explanation:</u> Funds are available due to schedule delays in the Diminishing Manufacturing Sources Replacement of Avionics for Global Operations and Navigation (DRAGON) integration. DRAGON integration is delayed for two primary reasons. First, aircraft have been available for Programmed Depot Maintenance (PDM) at a slower than planned rate. Second, block 40/45 upgrades, which are still ongoing, must be completed before DRAGON integration. Therefore, funds for DRAGON integration are early to need.</p>							
<u>Missile Procurement, Air Force 19/21</u>						<u>-76,900</u>	
Budget Activity 02: Other Missiles							
Predator Hellfire Missile	3,437	288,765	3,437	288,765	-	-23,000	3,437 265,765
<p><u>Explanation:</u> Funds are available due to contract savings from all variants that provide precision kill capabilities. Savings are attributed to negotiated lower unit costs per missile system.</p>							

Unclassified

REPROGRAMMING ACTION

Page 5 of 8

Subject: Support for DHS Counter-Drug Activity Reprogramming Action Appropriation Title: Various Appropriations	DoD Serial Number: FY 19-02 RA
	Includes Transfer? Yes

Component Serial Number:	(Amounts in Thousands of Dollars)							
	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
Line Item	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a	b	c	d	e	f	g	h	i

Budget Activity 03: Modification of In-service Missiles

Minuteman III Modifications	124,592	124,592	-24,300	100,292
-----------------------------	---------	---------	---------	---------

Explanation: Funds are available due to a slip in the production schedule to FY 2020 for the Launch Control Block Upgrade program due to late design changes to the Journal Memory Loader and Printer.

Air Launch Cruise Missile (ALCM)	47,632	47,632	-29,600	18,032
----------------------------------	--------	--------	---------	--------

Explanation: Funds are available due to contract savings from reduced guided missile flight controller modification requirements; and due to lack of executable requirements for Support Equipment and Low Cost Mods in FY 2019.

Space Procurement, Air Force, 19/21**-209,700****Budget Activity 01: Space Procurement, AF**

Evolved Expendable Launch Capability	659,981	659,981	-44,900	615,081
--------------------------------------	---------	---------	---------	---------

Explanation: Funds are available due to the Space Test Program (STP)-4 satellite provider termination of the Robotic Servicing of Geosynchronous Satellites (RSGS) spacecraft. There is no longer a need for the National Security Space Launch (NSSL) launch capability mission integration required to launch this mission for this satellite, meaning the mission has been removed from the official launch mission manifest. The next possible launch Space Vehicle host is outside the 24-month planning cycle, therefore these funds are early to need.

Evolved Expendable Launch Vehicle (Space)	5	954,555	5	954,555	-1	-164,800	4	789,755
---	---	---------	---	---------	----	----------	---	---------

Explanation: Funds are available due to the Space Test Program (STP)-4 satellite provider termination of the Robotic Servicing of Geosynchronous Satellites (RSGS) spacecraft. There is no longer a need for the National Security Space Launch (NSSL) service for this satellite, meaning the mission has been removed from the official launch mission manifest. The next possible launch Space Vehicle host is outside the 24-month planning cycle, therefore these funds are early to need.

Unclassified

REPROGRAMMING ACTION

Page 6 of 8

Subject: Support for DHS Counter-Drug Activity Reprogramming Action						DoD Serial Number: FY 19-02 RA			
Appropriation Title: Various Appropriations						Includes Transfer? Yes			
Component Serial Number:		(Amounts in Thousands of Dollars)							
		Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
Line Item		Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a		b	c	d	e	f	g	h	i

DEFENSE-WIDE DECREASES**-251,000****Chemical Agent and Munitions Destruction, Defense, 19/20****-251,000****Budget Activity 02: Chem Agents -RDT&E**

886,728

886,728

-251,000

635,728

Explanation: Funds are available due to unexecuted prior year funding plus current year appropriation that was found to be more than sufficient to cover the Assembled Chemical Weapons Alternative (ACWA) program's funding needs in FY 2019. Funds are available based on reduced projected costs in FY 2019 (to include additional destruction technologies at Blue Grass Chemical Agent-Destruction Pilot Plant (BCAPP) and at the Pueblo Chemical Agent-Destruction Pilot Plant (PCAPP). Due to cost avoidance that will be gained by shortening schedules at both sites, the ACWA program has an asset. This does not inhibit the ability to pursue efforts/technologies to accelerate the destruction of the remaining U.S. chemical weapons stockpile.

Unclassified

REPROGRAMMING ACTION

Page 7 of 8

Subject: Support for DHS Counter-Drug Activity Reprogramming Action							DoD Serial Number: FY 19-02 RA		
Appropriation Title: Various Appropriations							Includes Transfer? Yes		
Component Serial Number:		(Amounts in Thousands of Dollars)							
		Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
Line Item		Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a		b	c	d	e	f	g	h	i

PART II

FY 2019 REPROGRAMMING INCREASE: **+681,535**

Drug Interdiction and Counter-Drug Activities, Defense, 19/19 **+681,535**

Budget Activity 01: Counter-Narcotics Support

238,306	1,056,771	+681,535	1,738,306
---------	-----------	----------	-----------

Explanation: Funds are required to provide support for counter-drug activities of the Department of Homeland Security (DHS). DHS has identified areas along the southern border of the United States that are being used by individuals, groups, and transnational criminal organizations as drug smuggling corridors, and determined that the construction of additional physical barriers and roads in the vicinity of the United States border is necessary in order to impede and deny drug smuggling activities. DHS requests DoD assistance in the execution of projects to replace existing vehicle barriers or dilapidated pedestrian fencing with new pedestrian fencing, construct roads, and install lighting. Title 10, U.S.Code, Section 284(b)(7) authorizes the DoD to support counterdrug activities of other Federal agencies through the construction of roads and fences, and the installation of lighting, to block drug smuggling corridors across international boundaries of the United States. Such support is funded using DoD's Drug Interdiction and Counter-Drug Activities appropriation.

FY 2019 REPROGRAMMING DECREASES: **-681,535**

Afghanistan Security Forces Fund, 19/20 **-604,000**

Budget Activity 06: Afghan National Army

1,639,993	1,639,993	-279,000	1,360,993
-----------	-----------	----------	-----------

Budget Activity 07: Afghan National Police

726,264	726,264	-117,200	609,064
---------	---------	----------	---------

Budget Activity 08: Afghan Air Force

1,728,263	1,728,263	-71,900	1,656,363
-----------	-----------	---------	-----------

Budget Activity 09: Afghan Special Security Forces

825,480	825,480	-135,900	689,580
---------	---------	----------	---------

Explanation: Funds are available from the Afghanistan Security Forces Fund (ASFF) due to forward funding of Afghan National Defense and Security Forces (ANDSF) requirements in the FY 2018/2019 ASFF appropriation and from cost savings identified during a comprehensive contract management review conducted by the Commander, Combined Security Transition Command – Afghanistan (CSTC-A) from

Unclassified

REPROGRAMMING ACTION

Page 8 of 8

Subject: Support for DHS Counter-Drug Activity Reprogramming Action					DoD Serial Number: FY 19-02 RA				
Appropriation Title: Various Appropriations					Includes Transfer? Yes				
Component Serial Number:		<i>(Amounts in Thousands of Dollars)</i>							
		Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
Line Item		Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a		b	c	d	e	f	g	h	i

September 2018 through March 2019. The revised funding levels allow the CSTC-A to provide full support to the ANDSF sustainment, infrastructure, equipment, and training and operations requirements.

Operation and Maintenance, Defense-Wide, 19/20**-77,535****Defense Security Cooperation Agency****Budget Activity 04: Administration and Servicewide Activities**

1,262,434

1,262,434

-77,535

1,184,899

Explanation: Funds are available from the Coalition Support Fund (CSF) due to no projected claims for reimbursements from key cooperating nations. The Department has preserved some CSF for projected Coalition Readiness Support Program requirements and Jordan border security reimbursements.